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82-682

IN THE

Supreme Court of the United States

October Term, 1982

No. . . . . . .

WILLIAM B. RICHARDSON,
Petitioner

v.

G. WILLIAM MILLER, Secretary of the Treasury,
STANSFIELD TURNER, Director, Central Intelligence,
JAMES T. McINTYRE, Jr., Director, Office of Management and Budget
JEROME KURTZ, Commissioner, Internal Revenue Service,
BERNARD J. MISKANIC, I.R.S. Officer, Greensburg, (Pa.) Office.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS

For the Third Circuit

No. 81-1392

WILLIAM B. RICHARDSON, *pro se*
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The Palace Printer, Greensburg, PA 15601

QUESTIONS PRESENTED

1. Does Title 31 USCA sect. 66b (a), which mandates that the Treasury publish for the President, the Congress and the Public full disclosure of financial operations of the government, give petitioner standing to proceed in protection of his civil rights, or of equal rights, and establish federal question jurisdiction (28 USC 1331 and 28 USC 1343 (4)) when defendants deny him the publication mandated and purposefully and intentionally falsify the Treasury's accounting and reporting?

2. Can a complaint be dismissed on the grounds of Sovereign Immunity or Lack of Standing in an action against federal officials under Title 28 USCA sect. 1331 based on the Constitution and alleging (1) injury in fact (2) violations of petitioner's Fourth and Fifth amendment rights (3) taxpayer standing (4) citizen standing (5) voter standing and (6) standing based on unenforced criminal laws?

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Legislative History

U.S. Congressional Code Service, Vol. 2, p. 3707 (1950) 10

REFERENCE TO OFFICIAL AND UNOFFICIAL OPINIONS

There is only one opinion in this case: officially reported as: *Richardson v. Miller,* 504 F. Supp. 1039 (W.D.Pa. 1980) ... A-13

The Memorandum of Dimissal (A-13) was based on the face of the Amended Complaint (A-5 to A-13). No oral argument below.

GROUNDS FOR SUPREME COURT JURISDICTION

The District Court's Memorandum of Dismissal (A-13) does not agree with case law applicable to the jurisdictional statutes invoked and the facts alleged by the petitioner when considering dismissal based on *federal court jurisdiction, sovereign immunity,* and *standing.*

The petitioner seeks to review the Judgment Order of the Third Circuit Court of Appeals entered April 28th, 1982 (A-21) affirming the Memorandum Order of the District Court (A-13) entered December 28th, 1980.

Rehearing was summarily denied by the Third Circuit Court en banc (A-23) and entered May 24th, 1982.

On August 20th, 1982, an Order extending time for filing the Petition for Certiorari to and including October 20th, 1982, was entered by Associate Justice *William J. Brennan. Jr.* (A-24).

The statutory provision for Supreme Court jurisdiction is Title 28 USC sect. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

All *constitutional provisions* and *statutes* are set out in the Appendix (A-1 to A-5) and will accommodate the reading of the Amended Complaint (A-5) and the Memorandum of the District Court (A-13).

The *statutes* referred to in the "Questions Presented" section of this Petition are set out in the Appendix at page A-3 (sects. 1331 and 1343(4)) and at page A-4 (sect. 66b(a)).

The appropriate citation of the *constitutional provisions* with corresponding page numbers in the Appendix is set out below:

Article 1 sect. 1 clause 1 ..... A-1
Article 1 sect. 7 ..... A-1
Article 1 sect. 8 clause 1 ..... A-2
Article 1 sect. 8 clause 12 ..... A-2
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The Statutes involved:

Title 26 USCA sect. 7421(a) A-2
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Title 50 USCA sect. 403j(b) A-5

STATEMENT OF CASE

Although the petitioner set out in his Amended Complaint (A-5) that he was proceeding under the basic jurisdictional statute Title 28 USC sect. 1331[1]; the statutorily dependent jurisdictional statutes Title 28 USC sects. 1340[1] and 1343(4)[1]; and the peripherally jurisdictional statutes Title 28 USC sects. 1361[1] and 2201[1]; the single opinion in this case to date (Memorandum of the District Court, p. A-13) treats the question of *federal question jurisdiction, sovereign immunity* and *standing* as though each operated independently against this petitioner and his Amended Complaint (A-5). Sect. 1331[1] was either misconstrued or not construed at all. The dismissal was based on a Rule 12b motion of the respondents.

Title 28 USC sect. 1331[1] incorporates the concept of liability of federal officials commensurate with the liability imposed on state officials under Title 28 USC sect. 1343(3).

Because of sect. 1331[1] invocation and the obvious federal thrust of the Amended Complaint, *federal question jurisdiction* should present no problem. Sect. 1340[1] could carry jurisdiction under its own weight because of the attack on the constitutionality of *Title 26 USC sect. 1 et seq* and because a federal lien was involved.

Sovereign immunity is likewise misconceived by the District Court and the Third Circuit because "the thrust of the claim" is *not* " —against the United States Treasury." No diminution of tax liability is claimed; only accurate tax liability consistent with the adjudication of the Tax Court.

Standing is clearly established by the Amended Complaint. Congress has the plenary power to extract any kind of reporting it deems necessary in implementing the constitutional provisions limiting the power of Congress to tax and spend and Congress has spoken in its *Title 31 statutes (Money & Finance)*, primarily in *Title 31 USC sect. 66b(a)*. See Appendix p. A-4 for 66b(a) and p. A-7 for para. 10 of Amended Complaint.

Statement of Case (cont.)

Congress legislated "full disclosure" of every agency's accounts in 1950.

Because of the allegations of *concrete injury* and *personal stake*, the Amended Complaint has established petitioner's *standing* to invoke (initially) sect. 1331[1], sect. 1340[1], and sect. 1343(4)[1] which, in turn, activate Title 28 USC sect. 1361[1] and Title 28 USC sect. 2201.[1] It seems unthinkable that this individual petitioner would never have standing to pursue an on-going fraudulent accounting and reporting scheme of the Executive in collusion with certain committees of Congress, but this seems to be the message from below even when the petitioner alleges particularized injury and injury as a member of a protected class.

[1] Jurisdictional statutes set out verbatim Appendix, p. A-3.

ARGUMENT

QUESTION PRESENTED NUMBER ONE

Does Title 31 USCA sect. 31 USCA sect 66b(a), which mandates that the Treasury publish for the President, the Congress and the Public full disclosure of financial operations of the government, give petitioner standing to proceed in protection of his civil rights, or of equal rights, and establish federal question jurisdiction (28 USC 1331 and 28 USC 1343(4)) when defendants deny him the publication mandated and purposefully and intentionally falsify the treasury's accounting and reporting?

Immunity from damages does not ordinarily bar equitable relief as well. *Wood v. Strickland,* 420 US 308 (1975) n. 6 p. 314.

The public interest requires decisions and action to enforce laws for the protection of the public. *Scheuer v. Rhodes,* 416 US 232, 241 (1974)

Title 31 USCA sect. 66b(a), (p A-4) directly protects the interest of the public: (1.) It guarantees them full disclosure of the financial operations of the federal government, and (2.) It guarantees them the same reports that go to the President and the Congress. (see para 10, Amended Complaint, p. A-7)

It was never intended that the Treasury keep more than one set of books; nor to report differently to the President or the Congress or the public.

With all its defects, delays and inconveniences, man has discovered no technique for long preserving free government except that the executive be under the law. *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579, 655 n. 37 (1952).

The entire issue of whether a private right of action can be accorded the petitioner in this case is founded on the proposition that public money illegally appropriated and unaccounted for, purportedly in the interest of National Security and Foreign Relations, can be used to punish a loyal American Citizen residing

permanently within the United States. Such a Citizen, has by executive fiat, been made the member of a *special* class which the statute (Title 31 USC 66b(a), (p. A-4) was designed to protect.

The Congressional Declaration of Policy is set out in Title 31 USCA sect 65(a): "The accounting of the Government provide full disclosure of the results of financial operations—"

The definition of "executive agency" is set out in Title 31 USCA section 65a: "—the term 'executive agency' means any executive department or independent establishment in the executive branch of the Government —" Exeptions are included but are not relevant to this case.

The Legislative History is set out under "Budget and Accounting Procedures Act of 1950" beginning at page 3707, Volume 2, 81st Congress, Second Session, 1950.

THE TAX CLAIM

A tax court decision is a declaratory judgment. The IRS must adhere strictly to the mandates of the decision and apply what they have previously collected to the credit of the taxpayer. There was no reason why the IRS billing should have been more than double the amount that the tax court decision would call for. This is concrete evidence that the petitioner is a target of clandestine elements.

The administrative remedy is not adequate. The District Court in its opinion admits (p. A-14) that "Jurisdiction may be present only in those situations in which 'under no circumstances could the Government ultimately prevail' on the tax claim." citing *Enochs v. Williams Packing Co.*, 370 U.S. 1, 5 (1962).

The purpose of the anti-injunction statute (26 USC 7421(a), (A-2)) and the tax refund provision (26 USC 7422 (a), (A-2)) and the exclusion in the Declaratory Judgment provision (28 USC 2201, (A-3) as to taxes is to prevent the Internal Revenue Service from becoming bogged down with lawsuits in regard to their own assessments and collection; also, to direct the taxpayer into the Tax

Court or to allow him to have a refund in the District Court later on when the taxpayer pays the IRS assessment if it is excessive. It is an entirely different matter when there has been a tax court decision. The IRS cannot play cat and mouse with the taxpayer after a tax court decision. They would not do so except where it was orchestrated by the intelligence division of the IRS. It is well known that this division has received clandestine assignments funded under the CIA Act. There is no question but that the deliberate overcharge in the case was aimed at harming the petitioner irreparably. This it would have done. The lien placed on his wages would have taken all but $50.00 from every paycheck and would have taken approximately eight months to pay it off. (p. A-10 Complaint)

The IRS, of course, has offices in Pittsburgh, 30 miles from Greensburg. The CIA has offices in Pittsburgh. Telephones (412) 281-4009 and (412) 391-7777.

QUESTION PRESENTED NUMBER TWO

Can a complaint be dimissed on the grounds of Sovereign Immunity or Lack of Standing in an action against federal officials under Title 28 USCA sect. 1331 based on the Constitution and alleging (1) injury in fact (2 violations of petitioner's Fourth and Fifth amendment rights (3) taxpayer standing (4) Citizen standing (5) voter standing and (6) standing based on unenforced criminal laws?

Injury In Fact: The petitioner alleges injury in fact in his Amended Complaint (para. 16, p. A-9). *Gladstone Realtors v. Village of Bellwood,* 441 US 91, 99 (1979). The District Court failed to comprehend that the petitioner was a target of the clandestine services as he alleged.

Violations of Petitioner's Fourth and Fifth Amendment Rights: A cause of action may be implied from a provision of the Constitution against Federal officials comparable to actions

against state officials under Title 42 USCA sect. 1983. Such has been held to arise under the Fourth Amendment (A-2). *Bivens v. Six Unknown Named Agents of the Fed Bur of Narcotics*, 403 US 388 (1971). Under the Fifth Amendment (A-2): *Davis v. Passman*, 442 US 228 (1979). Under the Eighth Amendment: *Carlson v. Green*, 446 US 14 (1980).

All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. *Butz v. Economu*, 438 US 478, 506 (1978).

Taxpayer Standing: Taxpayer standing, in the complaint, is based on violations of Article 1 sect. 8 clause 12, (A-2) and Article 1 sect. 9 clause 7, (A-2) which restricts the power of Congress to tax and spend. The petitioner has established a logical link between his status as taxpayer and the exercise of congressional power to tax and spend under Article 1 sect. 8 clause 1, (A-2). *Flast v. Cohen*, 392 US 83, 102 (1968). Likewise, the second aspect (in *Flast)* has been met; the taxpayer has shown a logical nexus between his status as taxpayer and the precise nature of the constitutional infringement. That is, he has shown that the challenged enactments (Title 26 USCA sect. 1 et seq and any tax law; Title 31 USCA sect. 1029 (A-4), a fiscal law; and Titles 50 USCA sects. 403f (a), (A-4) and 403j (a), (A-5) exceed specific constitutional limitations imposed upon congressional exercise of the taxing and spending power of Article 1 sect. 8 clause 1, (A-2). *Flast v. Cohen*, 392 US 83, 102, 103 (1968). (see Amended Complaint: para. 5, A-6; para. 6, A-6; para. 7, A-7; para. 9, A-7)

Citizen standing: A Citizen has standing consistent with the rule of taxpayer's standing to challenge a gross deviation from legislative procedure relative to passing laws, especially bills of appropriation, where the procedure is clearly defined in the Constitution (Article I sect. 7, (A-1) and where it is a clear limitation on the power of Congress to legislate (Article 1 sect. 1, (A-1). Congress approves through committees, without a clear majority of Congress and without the signature of the President, bills of appropriation for secret missions tacked on to other bills of

appropriation. These secret amounts, undisclosed to the majority of Congress, are later transferred under the CIA Act (Title 50 USCA sect. 403f (a) (A-1)). These amounts support missions known to and approved by certain privileged committees of Congress without knowledge or approval of a majority of Congress and without the President's signature thereon. There is no provision in our Constitution for Congress and the President to conduct domestic or foreign affairs in this manner.

See *Harrington v. Bush*, 553 F2d 190 (1977) at last column page 195 and first column page 196 where the funding scheme is described. This can be determined as fairly accurate since the respondents (government) substantially admitted this procedure in their briefs filed in the Third Circuit Court of Appeals. The implication was that such procedure was judicially confirmed and beyond attack. No where in petitioners Prayer for Relief does he ask that the court "compel the government to give him information on precisely how the CIA spends its funds." (Memorandum District Court: p. A-11). But he is convinced the total amounts transferred under the CIA Act must be honestly disclosed and the appropriations therefore fully considered by every member of Congress even if it is in secret session. This does not mean details on every expenditure (Title 50 USCA 403j (b), (A-5).

It is interesting to note in the *Harrington* case at page 196, Title 50 USC sect. 403j (b), (A-5) is incorrectly set out. The words as set out there were "such expenditure of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified." This should have read:

> '---such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

If the above had been correctly entered, there might not have been any need for note 15 page 196 indicating the court's frustration with the meaning of Title 50 USC sect. 403j (b). This statute is set out in the Appendix, p A-5.

At any rate, the CIA does not submit any vouchers relating to its operations even including operations within the United States; not-with-standing some such vouchers might be void of detail.

Voter Standing. The complaint's reference to Voter Standing is set out in paragraph 11 (p. A-8) and 12 (p. A-8) and 13 (p. A-8). Maintaining the effectiveness of one's vote is a subject for standing and for judicial determination in a federal court. *Baker v. Carr,* 369 US 186, 208 (1962).

Standing Based on Unenforced Criminal Laws: The Criminal Laws violated are set out in paragraph 19 (p. A-10) under the heading CRIMES CODE VIOLATION. Title 18 USCA sect. 643 is particularly applicable:

> "Whoever, being an officer, employee or agent of the United States of any department or agency thereof, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law is guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed $100, he shall be fined not more than $1,000.00 or imprisoned not more than one year, or both."

The expenditures of public money transferred from other agencies under the CIA Act simply are not reported and the host agency reports the transfers to the Treasury as expenditures. ***The credibility of every agency's expenditures in the federal government are thus affected*** making the Treasury's complete report false and fraudulent. All citizens are under an obligation to aid in enforcing the criminal laws. *Miranda v. Arizona,* 384 US 436, 481 (1966). A private remedy may be implicit in a statute not expressly providing one. *Cort v. Ash,* 422 US 66, 78 (1975).

CONCLUSION

That the petitioner has alleged a constitutional claim of sufficient substance to support federal jurisdiction under Title 28 USC sect. 1331, (A-3). Under such circumstance, a federal district court "---has power to consider other claims which might not provide an independent basis for federal jurisdiction." *Chapman v. Houston Welfare Rights Organization,* 441 US 600, 606 (1979).

That the petitioner may claim actual and punitive damages in a *Bivens* type (403 US 388) action against federal officials. *Carlson v. Green,* 446, US 14 (1980).

That the petitioner may opt to forego a jury trial and actual and punitive damages in deference to equitable and declaratory remedies of greater significance without diminution of his federal cause of action.

That the petitioner can invoke the District Court's authority to show that he personally has suffered some actual or threatened injury as a result of the putatively illegal or unconstitutional conduct of the defendants and that the injury fairly can be traced to the challenged action and is likely to be redressed by a favorable decision.

That the assertion of the District Court that Federal Question Jurisdiction was lacking is too anomalous to argue at length:

> " 'It is obvious---that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right. But as the very nature of the controversy was Federal, and, therefore, jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that the action was not one arising under the Constitution and laws of the United States.' *Swafford v. Templeton,* 185 US 487, 493. 'For it is well settled that the failure to state a proper

cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction.' *Bell v. Hood,* 327 US 678, 682" *Baker v. Carr,* 369 US 186, 199, 200 (1962).

That instead of a Rule 12b dismissal, an answer should have been required.

Respectfully submitted,

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*** APPENDIX ***

CONSTITUTIONAL PROVISIONS

Article 1 Sect. 1 Clause 1.: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
Article 1 Sect. 7: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; If he approves he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Article 1 Sect. 8 Clause 1: (The Congress shall have power) To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article 1 Sect 8 Clause 12: (The Congress shall have power) To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years.

Article 1 Sect 9 Clause 7: No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Amendment Four: (applicable parts) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated - - -.

Amendment Five: (applicable parts) No person shall --- be deprived of life liberty, or property without due process of law

Amendment Ten: (applicable parts) The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATUTES

Title 26 USCA sect 1 et seq. Not set out.

Title 26 USCA sect. 7421 (a): Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

Title 26 USCA sect 7422 (a): No suit or proceeding shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with

the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

Jurisdictional Statutes

Title 28 USCA sect. 1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28 USCA sect. 1340: The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

Title 28 USCA sect. 1343 (4): The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1), (2), and (3): not applicable

(4). To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 28 USCA sect. 1361: The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Title 28 USCA Sect. 2201: In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Fiscal Statutes:

Title 31 USCA Sect 66b (a): The Secretary of the Treasury shall prepare such reports for the information of the President, the Congress, and the public as will present the results of the financial operations of the Government; *Provided,* That there shall be included such financial data as the Director of the Office of Management and Budget may require in connection with the preparation of the Budget or for other purposes of the Office. Each executive agency shall furnish the Secretary of the Treasury such reports and information relating to its financial condition and operations as the Secretary, by rules and regulations, may require for the effective performance of his responsibilities under this section.

Title 31 USCA Sect. 1029: It shall be the duty of the Secretary of the Treasury annually to lay before Congress, on the first day of the regular session thereof, an accurate, combined statement of the receipts and expenditures during the last preceding fiscal year of all public moneys, including those of the United States Postal Service, designating the amount of the receipts, whenever practicable, by ports, districts, and States, and the expenditures, by each separate head of appropriation.

Title 50 USCA CIA Statutes sect. 403f (a) (pertinent part) In the performance of its functions, the Central Intelligence Agency is authorized to:

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended

for the purposes and under the authority of sections 403a - 403j of this title without regard to limitations of appropriations from which transferred; - - -

Note: **Title 31 USCA Sect. 66b** was passed subsequent to above.

Title 50 USCA Sect 403j(b): The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures *to be accounted for solely on the certificate of the Director* and every such certificate shall be deemed a sufficient voucher for the amount therein certified. (underlining supplied)

THE AMENDED COMPLAINT

Usual Heading - Civil Action Western District of Pennsylvania No. 80-503

1. Jurisdiction is founded on *Title 28 USCA section 1331* (Federal Question); *Title 28 USCA section 1361* (Mandamus to Compel Government Official); *Title 28 USCA section 1343 (4)* (Equitable Relief under Civil Rights Statute); and *Title 28 USCA section 1340* (Any Act of Congress under Internal Revenue Statute).

2. Jurisdiction is further founded on *Title 28 USCA section 2201* and applicable to any Declaratory Relief demanded herein; and, should the Court determine that this action, in part, is a judicial review of agency action, *Title 5 USCA section 703 and 702* would be jurisdictional.

3. The following constitutional provisions, when taken together, proscribe the delegation by Congress of Authority to raise revenue for, or to draw public money from, the Treasury:

Article 1 Section 7 Clause 1 (Bills for Raising Revenue)
Article 1 Section 7 Clause 2 (How a Bill becomes Law)
Article 1 Section 9 Clause 7 (No Money to be drawn except by Bill of Appropriation)

The legislative power emanating from Article 1 Section 1 Clause is modified and restrained by the above constitutional provisions and Article 1 Section 8 Clause 7 (the Taxing and Spending clause). Raising revenue and drawing money from the Treasury, as a legislative function, are inseparable as to faithful performance. Betrayal of a limitation on one is a betrayal of both.

4. Under the provisions of Article 1 Section 8 Clause 1 (Taxing and Spending), only the Congress of the United States can decide by a Bill or Appropriation whether public money is to be spent to pay the debts of the United States and to provide for the Common Defense and the General Welfare.

5. The Federal Income Tax Law (*Title 26 USCA section 1 et seq*) is unconstitutional in that it confiscates the income of taxpayers through surreptitious funding of government agencies; its complicated nature lends itself to manipulation by the Internal Revenue Service with both the law and its administration exuding lack of uniformity and fairness; it taxes unjustly requiring citizens to pay into a system that fraudulently reports outgo; and it specifically confiscates the property of the plaintiff by financing clandestine operations of Executive agencies under control of the CIA directed at him personally.

6. Title 50 USCA sect. 403f (a) of the Central Intelligence Agency Act is constitutionally repugnant in that:

(a). it delegates authority to the Office of Management and Budget to determine what are debts of the United States and what constitutes the spending of public money in providing for the common Defense and General Welfare.

(b). it has funded since 1949 a para-military organization without a Bill of Appropriation passed by Congress and violates Article 1 Section 8 Clause 12 (prohibiting an appropriation for armies to cover more than 2 years) as a limitation on Article 1 Section 8 Clause 1, the Taxing and Spending clause.

(c). it frustrates the purpose of the Accounting and Reporting clause of Article 1 Section 9 Clause 7 as a limitation

on Article 1 Section 8 Clause 1 is and promotes the concept that Congress intended a completely new set of rules governing appropriations and reporting of receipts and expenditures of the Intelligence community.

7. Title 31 USCA sect. 1029 (Fiscal) is unconstitutionally vague and ambiquous and violates Article 1 Section 9 Clause 7 because it requires all public moneys to be set out only under "each separate head of appropriation." Since the CIA and other secretly funded agencies have no appropriation designated by Congress, the transfers to them are fraudulently covered up by the head of appropriation from which the funds are transferred.

8. Title 50 USCA sect. 403j (a) is fatally defective as a Bill of Appropriation because it sets out no amounts for the CIA to receive and has no time limit. This statute became effective in June, 1949 and has unconstitutionally and fraudulently funded the CIA ever since.

CIA VIOLATES OWN CHARTER

9. Title 50 USCA sect. 403j (b) provides for fiscal reporting by the CIA which it summarily disregards. Certificates of the Director simply are not submitted. The constitutionality of this provision is questionable.

CIVIL RIGHTS

10. Title 31 USCA section 66b (a) (Money and Finance) is a *Civil Rights* statute protecting the right of the public and the plaintiff to know how public money is spent and what agencies receive public money for the purpose of negotiating the transformation of that money to non-public status. The public - and the plaintiff - is assured the right to make an independent decision on whether the transition was worth the cost and in the public interest. This statue expresses and projects the constitutional concept of Article 1 Section 9 Clause 7 even though a constitutional limitation is self-implementing.

11. Certain members of Congress conspire with the Treasury, the Office of Management and Budget, and the CIA to keep other members of Congress and the public from knowing the funding amounts and expenditures for the CIA. This creates a small cadre of inside-dopesters within Congress who think they are being told the truth about disposal of public moneys; it also destroys the "one Congressman - one vote" concept and violates the separation of powers doctrine. The practice violates Congress' own criminal code: Title 18 USCA sect. 241.

12. Since the inception of the CIA in 1949, approximately 350 Billion dollars have been transferred from other agencies with ostensibly legitimate appropriations to secret accounts supporting secret unreported operations to be hidden forever from the public. This continues even though these secret operations eventually come home to haunt the American People; such as, the hiring of criminals to assassinate, collaboration with international corporations, collaboration with CREEP; and collaboration with self-serving foreign dictators and monarchs. Transfers to these secret accounts do not destroy the identity of the money as public money but is so classified by the Treasury even though these accounts are kept on Treasury books at taxpayer's expense.

13. The power to legislate money bills in a fool's paradise has never been committed to the Federal Government and, whether raising revenue or appropriating public money, the Bill is defective because Congress is devoid of power. This power has reverted to the States or to the people under provisions of Amendment Ten and the Federal power is nullified completely relative to collection of taxes from individual citizens until they are assured that the reporting of the receipts and expenditures of all public money to them and their elected officials is true and correct. *No other interpretation of our Constitution makes any sense.*

14. The covering up forever of the funding, expenses, and excesses of a dangerously unstable organization with unprecedented power under our form of government is ridiculous. This legislative naivete has enabled the CIA to feel secure and

undetectable as to any operation even against an American citizen. From 1969 to the present, such an operation has been maintained against the plaintiff designed to thwart his economic development and so sophisticated as to avoid outright detection.

15. The plaintiff first filed in Federal District Court November 16, 1967 attacking the unconstitutional reporting engendered by the CIA Act of 1949. He has been in constant litigation since then over this anomaly and the degenerative effect if it has had on government and the economy. He is appalled that he has been unable to get a determination on the merits.

16. The Plaintiff was fired from employment in 1969 because of the CIA litigation; was unable to find employment for over a year; and for ten years now has worked at employment in a remunerative category inappropriate to his background qualifications. He has been embarrassed by discrimination, denied due process, and has suffered depletion of savings and property because of the vendetta against him by the defendants.

17. The plaintiff has been in litigation with the Commissioner of Internal Revenue for several years now in tax court. The issue involves taxes for the years 1971, 1972, 1973 and 1974 and the authority of the IRS to demand reports and/or payments of tax. On January 10th, 1980, the Tax Court rendered a decision. On March 12th, 1980, the IRS sent plaintiff a bill twice as large as the Court indicated was due. On May 19th, 1980, the Greensburg defendant delivered to the receptionist in the Controller's office of plaintiff's employer a levy on wages $900.00 less than the billing on March 12th. The plaintiff has received no detailed explanation of how the IRS arrives at amounts owed.

18. Although part of the IRS assessment purports to be interest charges, no interest would be applicable prior to the Tax Court decision. No part of the Tax Court decision encompassed back-dated interest and no such interest is chargeable because no tax was due until the decision:

(a). the plaintiff submitted no reports and gave timely notice to the IRS with explanation similar to this complaint

set out in a letter dated April 4th, 1972 and addressed to Commissioner Walters.

(b). in that letter, the plaintiff stated that he owed no tax and demanded that money deducted from his wages be returned to him.

(c). if he had submitted on-time reports in the usual manner under an unconstitutional tax law, no tax would have been due over and above his deductions from pay because of his low income.

(d). the IRS could have taken other action based on the letter of April 4th, 1972; instead, it chose to raise the issue of whether plaintiff owed any tax - a controversy it could draw out indefinitely and, unknown to plaintiff, the IRS would be planning to add interest and other padding while plaintiff continued to struggle in a losing battle against inflation. This latter was also known to the IRS. The plaintiff resisted the IRS contentions of tax.

CRIME CODE VIOLATION

19. Title 18 USCA sect. 643 makes it a criminal offense for a public official to receive public money he is not authorized to retain as salary, pay or emolument, and who fails to render his accounts for the same as provided by law. The CIA renders no accounts for congressional or public consumption. Other criminal statutes are violated; Title 18 USCA sect 643, 644, 649, 651, 1001, 1018 and 2073. Such criminality is repugnant to Article 1 Section 8 Clause 1 and its limitating clauses in addition to violating the CIA Act and is injurious to this plaintiff.

PUNITIVE DAMAGES

20. A conspiracy to deprive or stifle economic growth of an American citizen by very powerful Executive units acting through stealth and demagoguery assisted by a coordinate branch of government and maintained by plaintiffs payments to government without accounting therefore is a seizure of property oppressive

under Amendment Four to the Constitution and a denial of the due process provisions of Amendment Five. Punitive damages would be in order.

PRAYER FOR RELIEF

21. That the District Court issue a Declaratory Judgment having the force and effect of law that the Federal Income Tax Law, Title 26 USCA sect. 1 et seq is unconstitutional because:

A. Congress extracts payment from individual taxpayers who make up the public in general and fraudulently accounts to them contrary to constitutional provisions which guarantees them an honest accounting.

B. Congress extracts payment from individual taxpayers - who may be classified as "the people" - when it has abdicated its responsibility for legislating relative to the debts, general welfare and common defense contrary to the basic guarantees of the Constitution that it will do so in protection of the people of the United States.

22. That the District Court issue a Declaratory Judgment having the force and effect of law that the following statutes are unconstitutional:

A. Title 50 USCA sect. 403f (a).
B. Title 50 USCA sect. 403j
C. Title 31 USCA sect. 1029

23. That the District Court issue a Declaratory Judgment having the force and effect of law that:

A. the Congress of the United States does not have the plenary power to falsify the accounting and reporting system of the United States Government and that such plenary power to exact any reporting and accounting it considers appropriate to the public interest must be governed by what the Constitution says is an accounting and reporting in the public interest.

B. reasonably reflects the allegations of this complaint.

24. That the District Court issue a Mandamus:

A. to the Secretary of the Treasury to publish an honest and true accounting and reporting document to the plaintiff that will present the financial operations of the United States Government for the years 1971, 1972, 1973, and 1974 as the Constitution and the laws prescribe before he is obligated to make any further payment to the IRS for the years in question.

B. to the Internal Revenue Service to correct its bill presented the plaintiff in the amount of $6,864.53 and to issue a demand consistent with the Tax Court's decision of January 10th, 1980 adding thereto no additional interest or other padding except that which would reflect a demand in accordance with a voidable Income Tax Law.

C. to the defendants to cease and desist from making contacts relative to the plaintiff or conducting any surveillance or otherwise doing anything suggesting plaintiff's disloyalty to the United States or its Constitution; and, particularly, to expunge all secret records reflecting any such suggestion.

25. that the District Court grant plaintiff such other, additional or alternative relief as may appear to the Court to be equitable.

26. That the District Court grant plaintiff his costs and other expenses herein computed back to November, 1967 as a punitive measure.

PRELIMINARY RESTRAINING ORDER

27. That the Court issue a Preliminary Restraining Order to the defendant MISKANIC and the Controller of Westmoreland County temporarily restraining the activation of the illegal levy against the plaintiff scheduled to begin with the June 6th, 1980 pay check. Such Order to remain in force until the issues of this case and the legality of the levy itself, including service thereof, are resolved.The levy as now set up would allow the plaintiff only

$50.00 per week to support himself, his wife, and daughter. The plaintiff has no substantial reserve of cash that would carry him more than two weeks with the levy in force.

RELIEF IN THE ALTERNATIVE

28. The plaintiff deems the foregoing relief to be of greater consequence to him than a money judgment but failing definitive action on the merits of the Declaratory Judgment, Mandamus, Civil Rights, Equitable and Restraining Order issues, the plaintiff demands in the alternative that a jury be empaneled to try the case for damages. Damages will be substantial.

WILLIAM B. RICHARDSON
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Tel. (412) 837-3467

WESTERN DISTRICT OF PENNSYLVANIA
USUAL HEADING **C.A. 80-503**
(No. 81-1392 in Court of Appeals)

MEMORANDUM

Ziegler, District Judge

This is a civil action for multifaceted relief predicated on two distinct theories. First, William B. Richardson challenges the computation of his tax liability by the Internal Revenue Service for the years 1971-74. Second, plaintiff asserts that Section 403f (a) of the Central Intelligence Agency Act[1] , which authorizes funding for that agency by secretive means, is constitutionally infirm. Presently before this court is the motion of defendants for dismissal or judgment pursuant to Rules 12 (b) (6) and 56 (b) of the Federal Rules of Civil Procedure. The Rule 12 (b) motion must be granted and the original and amended complaints dismissed for want of

[1] 50 U.S.C. sect. 403a et seq.

jurisdiction with respect to the tax claim and because Mr. Richardson has no standing to challenge the method of funding for the Central Intelligence Agency.

(A) The Tax Claim

William B. Richardson assails the computation of this tax liability by the Internal Revenue Service following a decision by the United States Tax Court. *Richardson v. Commissioner, 72 T. C.* 818 (August 9, 1979). On March 12, 1980, the Commissioner computed the taxpayers liability with interest for the years 1971-74. Plaintiff asserts the assessment is inaccurate and inflated.

This court is without jurisdiction to entertain this dispute since plaintiff has an adequate administrative remedy, 26 U.S.C. sect. 7422 (a) and 28 U.S.C. sect. 1346 (a), and the action is barred by the doctrine of sovereign immunity. Although relief is sought against individual defendants, the thrust of the claim is against the United States Treasury and, as such the sovereign is immune absent statutory consent. See, *Malone v. Bowdoin,* 369 U.S. 643 (1962); *Larson V. Domestic and Foreign Corp.*, 337 U.S. 682 (1949). No such consent is present. Moreover, the fact that plaintiff is seeking mandamus, declaratory and injunctive relief does not establish federal question jurisdiction. See, 28 U.S.C. sect. 2201.

Section 7421 (a) of the Internal Revenue Code of 1954, with exceptions not here relevant, provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."[2] The purpose of the statute "is to withdraw jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of taxes." *Enochs v. William Packing Co.*, 370 U.S. 1, 5 (1962). Jurisdiction may be present only in those situations in which "under no circumstances could the Government ultimately prevail" on the tax claim. 370 U.S. at 6. Even there the plaintiff must satisfy the equitable test of irreparable harm and want of adequate remedy at law. *Id.*

[2] 26 USCA Sect. 7421 (a)

We cannot say that, based upon the information available to it, the Department of Treasury does not have a good faith belief in the accuracy and enforceability of its claim. Nor can we conclude that there are no cicumstances under which the Internal Revenue Service may prevail against Mr. Richardson.[3]

(B) The Constitutional Questions

William B. Richardson seeks to perpetuate his prominence as a federal litigator[4] by challenging as *constitutionally infirm* various enactments of Congress, particularly section 403f (a) of the Central Intelligence Agency Act, 50 U.S.C. sect 403 et seq. Defendants respond with the assertion that all contentions are barred by the doctrines of res judicata or direct estoppel. We disagree because, although plaintiff has devoted many years to litigating similar questions involving the Act, no court has determined his standing to challenge section 403f (a).

That section enables the Central Intelligence Agency to receive secret appropriations which are transferred from other agencies. Plaintiff argues that section 403f (a) is unconstitutional for the following reasons: (1) it improperly delegates authority to withdraw public money from the treasury to the Office of Management and Budget; (2) it authorizes funding for a "para-military organization" in violation of Article I, Section 8, Clause 12; and (3) it violates the Statement and Account Clause of Article I, Section 9, Clause 7 of the Constitution. Plaintiff claims standing based on citizenship, civil rights, as a taxpayer and personal stake.

[3] We note that following the institution of this suit the Revenue Service has conceded inadvertant error in the original computation and the assessment is being revised.

[4] *United States v. Richardson*, 418 U.S 166 (1974); *Richardson v. Sokol*, 285 F. Supp. (W.D. Pa. 1968) aff'd without opinion, 409 F. 2d 3 (3rd Cir. 1979); *Richardson v. Spahr*, 416 F. Supp. 752 (W.D. Pa. 1976).

The first two grounds are foreclosed by *United States v. Richardson*, 418 U.S. 166 (1973). The Supreme Court has held a citizen does not have a sweeping right "to employ a federal court as a forum in which to air his generalized grievances about conduct of government." Id. at 175. Furthermore, we are satisfied that the invocation of a citizen's "civil rights" is insufficient to establish standing to challenge the method of funding of any federal agency.

The more nettlesome question concerns plaintiff's standing as a taxpayer or because of some "personal stake" to challenge the funding of the Central Intelligence Agency. At the core of any standing question is the requirement that a litigant demonstrate some "injury in fact". Trice, *American Constitutional Law*, at 80 (1978). A party must allege as a prelude "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of difficult -- questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962).

The supreme court in *Frothingham v. Mellon*, 262 U.S. 447 (1923) and *Flast v. Cohen*, 392 U.S. 83 (1968) addressed the question of standing to challenge legislative enactments. The Court articulated a two-pronged test:

> First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. 1, sect 8, of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute -- Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply

> that the enactment is generally beyond the powers delegated to Congress by Art. 1, sect 8. When both nexuses are established, the litigant will have shown a taxpayer's stake in the outcome of the controversy and will be a proper and appropriate party to invoke a federal court's jurisdiction.

392 U.S. at 102-103.

Although the test appears to be compact, it has engendered confusion[5] which is compounded by *United States v. Richardson*, supra. There the Court held that the taxpayer, the instant plaintiff, failed to establish standing under *Flast*. However, the reasoning was equivocal at best:

> Although the status he rests on is that he is a taxpayer, his challenge is not addressed to the taxing or spending power, but to the statutes regulating the CIA, specifically 50 U.S.C. sect. 403j (b) —
>
> Respondent makes no claim that appropriated funds are being spent in violation of a 'specific constitutional limitation upon the — taxing and spending power — 392 U.S. at 104. Rather, he asks the courts to compel the Government to give him information on precisely how the CIA spends its funds. Thus there is no 'logical nexus' between the asserted status of taxpayer and the claimed failure of the Congress to require the Executive to supply a more detailed report of the expenditures of that agency.

418 U.S. at 175.

Courts and commentators have encountered difficulty in determining which prong was found wanting. Some have referred to the failure to allege a taxing and spending violation.[6] Others have referred to the want of a spending power

[5] See, Note, Taxpayer Standing in the Wake of Flast v. Cohen, 31 Dick L. Rev. 495 (1977).

[6] *Id.*

transgression.[7] Still others have improperly concluded that any taxpayer grievance which is "common to the public" is fatally defective.[8]

We will articulate our understanding of the applicable principles. A federal court must first determine whether a taxpayer meets the test of *Flast*. The initial prong requires an allegation of some specific violation of the Taxing and Spending Clause of Article 1, Sect 8, which is merely a variation of the "injury in fact" requirement mandated by Article III.

Next the court must determine whether the taxpayer has established a "logical nexus between the status (or interest) asserted and the claim sought to be adjudicated." 392 U.S. at 102. Here a plaintiff must point to some specific statutory or constitutional limitation on the power to tax and spend, and to show that the limitation was designed to limit the expenditure under attack.

This second tangent ensures that the taxpayer is one for whom the statutory or constitutional provision was designed to protect. Unlike the first prong, it is not constitutionally mandated. It is merely a jurisprudential limitation designed to sharpen the presentation of difficult issues.[9]

If a plaintiff fails to meet both prongs of *Flast*, a district court must still consider whether the plaintiff has shown some "injury in fact" apart from his status as a taxpayer. Mere "generalized grievances which are common to all members of the public" will not

[7] *See, Boesel v. Schultz*, 388 F. Supp. 771 (S.D. Ohio 1975); *Civil Awareness of America v. Richardson*, 387 F. Supp. 1086 (E.D. Wis. 1975)

[8] *Halpern v. C.I.A.*, 629 F. 2d 144, at 152 (D.C. Circuit 1980)

[9] Tribe, *American Constitutional Law* at 98-99; *cf.*, *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

suffice. *United States v. Richardson*, 418 U.S. at 176-177. Some "personal stake in the outcome" must be alleged in order to warrant standing based on "injury in fact." *Baker v. Carr*, 369 U.S. at 204.

Applying these principles to the instant case we conclude that plaintiff's original and amended complaints must be dismissed. To be sure Richardson has averred a violation of the Taxing and Spending Clause; however, mere choice of words is not sufficient to create standing. The test is whether some specific expenditure has been challenged which is allegedly improper. We conclude that plaintiff has failed to satisfy the first prong of *Flast* following the Supreme Court's decision in *Richardson*.

Plaintiff is not challenging any specific congressional expenditure or asserting want of legislative power under the Taxing and Spending Clause. In essence, he is demanding knowledge of congressional allocations to the Central Intelligence Agency in order to dispute disbursements that he believes may violate the Clause. Such an indirect challenge does not establish standing for "although the status he rests on is that he is a taxpayer, his challenge is not addressed to the taxing and spending power but to the statutes regulating the CIA -- "*United States v. Richardson*, 418 U.S. at 175.

Further, in our judgment, plaintiff's allegations fail the second prong of *Flast* because he has failed to point to some specific or constitutional limitation of congressional power to tax or spend for the expenditures at issue. The Statement and Account Clause does not so delimit as asserted by plaintiff and therefore it conveys no. standing as a taxpayer. Id. at 175.

The final question is standing under the "injury in fact" theory. Does plaintiff have some personal stake in the outcome or stand to suffer some "particular, concrete injury" as a result of section 403f (a)? We conclude that he does not.

Allegations of dilution of voting power, inability to obtain

legislative representation, economic injury due to fiscal manipulations and secret expenditures, do not reach the level of concreteness required to establish injury in fact. They are "generalized grievances" which are "common to all members of the public." *Richardson* at 176-177.[10] It follows that since plaintiff has no standing to challenge the funding provisions with respect to the Central Intelligence Agency, *a fortiori*, he lacks standing to challenge 26 U.S.C. sect 1 et seq and 31 U.S.C. sect 1029 which allegedly contribute to the "impermissible purpose" of the Act.

In conclusion, we hold that the constitutional objections of plaintiff must be rejected for want of standing. The teachings of the Supreme Court make clear that a taxpayer is simply not a proper party to raise the instant questions due to the unique nature of the Central Intelligence Agency. This court does not reach the merits of the claim that section 403f (a) violates the Statement and Account Clause for the reason that the plaintiff's original and amended complaints must be dismissed.

An appropriate order will follow.

Dated: December 22,, 1980

[10] For the same reasons, plaintiff lacks standing to challenge sections 403j (a) or (b) of the C.I.A. Act.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 81-1392

WILLIAM B. RICHARDSON, Appellant

v.

G. WILLIAM MILLER, Secretary of the Treasury; STANSFIELD TURNER, Director, Central Intelligence Agency; JAMES T. McINTYRE, JR., Director, Office of Management and Budget; JEROME KURTZ, Commissioner, Internal Revenue Service

On Appeal from the United States District Court
for the Western District of Pennsylvania
C.A. No. 80-0503

Submitted Under Third Circuit Rule 12(6)
April 20, 1982

Before: ADAMS, VAN DUSEN and WEIS, Circuit Judges.

JUDGMENT ORDER

After considering all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgement of the district court be and is hereby affirmed.[1]

Cost to be taxed against appellant.

BY THE COURT,

Circuit Judge

ATTEST:

Betty J. Robinson, Deputy Clerk

DATED: April 28, 1982

[1] - Note continued on the next page

[1] Continuation of Order, Third Circuit, dated April 28, 1982

[1] It is noted that the affidavits of Don I. Wortman and Gilbert L. Kujawa, included in an appendix to the Government's brief in this court, were appended to the Government's memorandum in support of the Government's motion to dismiss the complaint. This memorandum was attached to and incorporated in the Government's motion to dismiss the complaint, which was docketed in the district court on July 7, 1980, and served on the plaintiff on July 3, 1980, according to the certificate of service. These affidavits have been available to both the plaintiff and the district court since the time such motion was served. Copies of the affidavits are reproduced in the Government's brief filed in this court at pp. 1a-4a of that brief, as noted above.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 81-1392

WILLIAM B. RICHARDSON, Appellant

v.

G. WILLIAM MILLER, Secretary of the Treasury et al

On appeal from the United States District Court
for the Western District of Pennsylvania
C.A. No. 80-0503

Before: Seitz, Aldisert, Adams, Gibbons, Hunter, Weis, Garth Higganbotham, Sloviter and Becker

Court en banc

Rehearing denied.

BY THE COURT,

Circuit Judge

ATTEST:

Deputy Clerk

DATED: May 24th, 1982

SUPREME COURT OF THE UNITED STATES

No. A-176

WILLIAM B. RICHARDSON, Petitioner

v.

C. WILLIAM MILLER, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of petitioner
It is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 20, 1982

/s/ William J. Brennan, Jr.

Associate Justice of the Supreme Court of the United States

DATED: August 20th, 1982

Office - Supreme Court, U.S.
FILED
NOV 29 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-682

In the Supreme Court of the United States

OCTOBER TERM, 1982

WILLIAM B. RICHARDSON, PETITIONER

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

REX E. LEE
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In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-682

WILLIAM B. RICHARDSON, PETITIONER

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner seeks review of the decision dismissing his suit for declaratory and injunctive relief as to his liability for taxes assessed pursuant to a prior decision of the United States Tax Court, and as to the constitutionality of the Internal Revenue Code and various statutory provisions dealing with the funding of the Central Intelligence Agency.[1] In the Tax Court case, the petitioner argued that he should be excused from paying his income taxes on the ground that

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[1]This suit is the latest in a series of proceedings instituted by the petitioner in an attempt to obtain a judicial ruling regarding the constitutionality of those funding provisions and to obtain information as to the amount of funds expended by that agency. See, e.g., *Richardson* v. *Sokol*, 285 F. Supp. 866 (W.D. Pa. 1968), aff'd, 409 F.2d 3 (3d Cir.), cert. denied, 396 U.S. 949 (1969); *United States* v. *Richardson*, 418 U.S. 166 (1974); *Richardson* v. *Spahr*, 416 F. Supp. 752 (W.D. Pa. 1976), cert. denied, 434 U.S. 830 (1977); *Richardson* v. *Commissioner*, 72 T.C. 818 (1979), appeal dismissed, No. 80-1665 (3rd Cir. Dec. 3, 1980.

the funding provisions of the Central Intelligence Agency Act of 1949, ch. 227, 63 Stat. 208, 50 U.S.C. (& Supp. IV) 403a *et seq.*, violate the Statement and Account Clause of the Constitution[2] because they permit receipts and expenditures of the Central Intelligence Agency to be charged against the appropriations of other government agencies without being publicly reported. The Tax Court rejected that contention and entered a decision sustaining the tax deficiencies for the years 1971 through 1974. These taxes were thereupon assessed and petitioner was billed for the amount (including interest) that assertedly remained due.

Thereafter, petitioner brought this suit in the United States District Court for the Western District of Pennsylvania in which he sought, inter alias, (1) a declaration that the Internal Revenue Code of 1954 is unconstitutional "in that it confiscates the income of taxpayers through surreptitious funding of government agencies" (Pet. App. A6); (2) a declaration that 50 U.S.C. 403f(a) and 403j, and 31 U.S.C. 1029 violate the Statement and Account Clause and various other provisions of the Constitution; (3) a declaratory judgment that an accounting of appropriations and expenditures for the Central Intelligence Agency is required by the Constitution; (4) a writ of mandamus requiring the Secretary of the Treasury to publish such a statement for the years 1971 through 1974 before attempting to enforce petitioner's tax obligations for those years; and (5) a preliminary restraining order prohibiting the Internal Revenue Service from levying against his wages pending resolution of the issues raised by his complaint (Pet. App. A11-A13).

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[2]United States Constitution, Article I, Section 9, Clause 7. In *United States* v. *Richardson*, 418 U.S. 166 (1974), this Court held that petitioner lacked standing to sue for a declaratory judgment that the Central Intelligence Agency Act violates the Statement and Account Clause of the Constitution.

The district court dismissed the suit. It first ruled that it lacked jurisdiction with respect to the tax claims raised by petitioner because the relief he sought is barred by the Anti-Injunction Act, 26 U.S.C. (Supp. IV) 7421(a), and the doctrine of sovereign immunity (Pet. App. A14-A15). As to the non-tax claims, the court ruled that, under this Court's decision in *United States* v. *Richardson, supra*, petitioner lacked standing to challenge the funding provisions in question since he had no personal stake in the outcome and had incurred no "particular, concrete injury" resulting from those provisions (Pet. App. A15-A20). The court of appeals affirmed (Pet. App. A21-A22).[3]

1. Section 7421(a) of the Internal Revenue Code of 1954 (26 U.S.C. (Supp. IV)) provides (with certain exceptions not pertinent here) that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." The bar of the Anti-Injunction Act may be avoided only if the plaintiff establishes (1) that under no circumstances can the government ultimately prevail with respect to its tax claims and (2) that equity jurisdiction otherwise exists—i.e., that the plaintiff will suffer irreparable injury for which there is no adequate remedy at law. *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1 (1962); *Bob Jones University* v. *Simon*, 416 U.S. 725, 736 (1974). Moreover, the Declaratory Judgment Act (28 U.S.C. 2201) specifically withholds authority from the district court to issue declaratory judgments with respect to federal taxes. The reach of this exception is at least as broad as the prohibition of the Anti-Injunction Act. *Bob Jones University, supra*, 416 U.S. at 732-733 n.7.

In accordance with these statutory provisions, the district court correctly held that it lacked jurisdiction to adjudicate petitioner's suit for declaratory and other equitable relief

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[3]This affirmance is reported at 681 F. 2d 808 (1982).

aimed at restraining the assessment or collection of federal taxes. Petitioner does not, and plainly cannot, show that his case comes within the *Williams Packing & Navigation Co.* exception, for he cannot demonstrate that the government would not prevail as to the tax liabilities at issue. Indeed, the Tax Court's prior decision authoratively resolved the question of his liability for the deficiencies asserted for the years 1971 through 1974. While that decision does not bar petitioner from challenging assessments or collections for those years on the ground that they are in excess of the deficiencies as determined by the Tax Court, there is no showing that the refund suit remedy specifically permitted for such claims under Section 6512(a)(2) of the Internal Revenue Code of 1954 would not be fully adequate for this purpose.[4] Moreover, while the years covered by the Tax Court's decision are now otherwise closed, petitioner's constitutional claims for subsequent years could also be litigated either in the context of future Tax Court proceedings or in a refund suit brought in comformity with Section 7422 of the Internal Revenue Code (26 U.S.C. & Supp. IV) and 28 U.S.C. 1346(a)(1). Thus, it is clear that this suit fails to satisfy either requirement of the *Williams Packing & Navigation Co.* test, and, accordingly, is barred by the Anti-Injunction Act.

2. In *United States* v. *Richardson, supra*, this Court held that petitioner lacked standing to attack, under the Statement and Account Clause of the Constitution, the statutory provisions which protect the confidentiality of information regarding the funding provided to the Central Intelligence Agency. That case is dispositive as to petitioner's standing to assert virtually the identical non-tax claims

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[4]Petitioner also sought to compel the Commissioner to issue a corrected billing for the years covered by the Tax Court's decision on the ground that the original billing was excessive (Pet. App. A9, A11). The Internal Revenue Service agreed, in part, and issued a corrected bill in a smaller amount (*id.* at A15).

in the present suit (Pet. 11-15). To be sure, while *United States* v. *Richardson* specifically addressed only petitioner's attack upon 50 U.S.C. 403j(b), relating to the expenditure of funds by that agency, petitioner here also challenges 50 U.S.C. 403f(a), which pertains to the transfer of funds from other agencies to the Central Intelligence Agency, and 31 U.S.C. 1029, relating generally to the reporting of public expenditures.[5] But these statutory provisions are comparable. The reasoning of *United States* v. *Richardson* therefore compels a decision that the petitioner similarly lacks standing here to challenge the additional statutes he now seeks to place in issue. Accord: *Valley Forge Christian College* v. *Americans United For Sepration of Church and State, Inc.*, No. 80-327 (Jan. 12, 1982).

It is respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

NOVEMBER 1982

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[5]This latter provision has recently been revised and will be codified at 31 U.S.C. 331. See Act of Sept. 13, 1982, Pub. L. No. 97-258, 96 Stat. 877.